Center on Race, Poverty & the Environment

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John L. Geesman
Commissioner and Acting Presiding Member
Blythe II AFC Committee
1516 9th Street
Sacramento, CA 95814

Re: Blythe Energy Project II, Docket No. 02-AFC-1

Dear Mr. Geesman:

The Center on Race, Poverty & the Environment submits these comments on the Blythe Energy Project (BEP II) on behalf of Blythe residents and urges the Commission to deny the license for this second power plant in the Blythe area. Residents of Blythe are strongly opposed to this project and have already described the negative impacts suffered as a result of the now-operating Blythe Energy Project I (BEP I). Now the Applicant wish to burden the community with another power plant, but is unwilling to utilize dry cooling, which would help alleviate many of the community's concerns. At the very least, the Commission should not license the plant without requiring the Applicant to use dry cooling instead of wet cooling.

The failure to require the Applicant to use dry cooling raises some serious environmental justice concerns. The Commission recognizes that this is an area where the population is 59% people of color and where 20% of the population is low income, a significant percentage. Presiding Member's Proposed Decision (PMPD) at p. 159. However, the Commission determined that there is not an environmental justice issue with licensing the power plant and dry cooling is not necessary because all the impacts will be reduced to a less than significant level.

This determination overlooks the fact that because the Applicant is using wet cooling, the power plant will be exposing the community to more impacts than they would experience if the plant used dry cooling. Because the Applicant is using wet cooling instead of dry cooling, the project must mitigate air impacts from: mist and non-criteria pollutants from the cooling tower; plumes of turbulence affecting air traffic safety in the area;[1] and significant water use in a desert area. These impacts would not be felt at all if dry cooling were used instead of wet cooling.

Furthermore, the proposed mitigation measures are questionable, making it impossible for the Commission to find that impacts are less than significant. The deficiencies lie in two main areas: air and water. The CEC's project analysis is supposed to be the functional equivalent of CEQA, but here it is not. Under CEQA, lead agencies must mitigate impacts were feasible. Public Resources Code § 21002.1(b). In selecting the mitigation measures, the lead agency must disclose the basis for choosing one mitigation measure over another and must ensure that it is enforceable. 14 CCR § 15126.4. Here, the Commission allows the Applicant to escape from the most effective mitigation measures merely on the basis that the Applicant objects to them. This is insufficient and violates the Commission's legal duty to mitigate the impacts.

Air

There are two main deficiencies with the air quality analysis and mitigation: (1) the mitigation of direct PM-10 and ammonia impacts, and (2) the cumulative air impact analysis.

PM-10

In order to control PM-10 emissions from the power plant, the Commission is requiring the Applicant to pave roads on tribal land. However, the U.S. Environmental Protection Agency and the California Air Resources Board disagree with using road paving credits to offset emissions from combustion sources of PM-10 because the percentage of PM2.5 and even smaller particulate matter is greater in combustion, as opposed to road dust which is much larger in size. The PMPD does not resolve this dispute. Rather it states that because the Mojave Air Basin does not have a PM2.5 problem the Applicant can utilize road paving credits. This analysis overlooks the fact that the Commission is using this mitigation measure to reduce impacts to a Level of Less than Significant. Instead of providing information to demonstrate that PM-10 impacts will be less than significant, the Commission defers analyzing this impact, requiring the Applicant to work with the Mojave Air District to verify that these emission mitigations are sufficient. PMPD Air Quality Condition AQ-C9. If the Commission cannot be assured road paving will offset emissions, the Commission cannot legally make this finding.

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[1]The Commission makes the statement that dry cooling would cause turbulence over a wider area than with wet cooling. PMPD at pp. 260-264. But, beyond that blanket conclusory statement, the Commission does not point to any modeling to substantiate that claim and provides no evidence to support it. The Commission has not shown that air traffic will actually be affected by dry cooling.

Ammonia

There are deficiencies with the two mitigation measures selected to mitigate ammonia impacts. The first is with the ammonia slip mitigation measures and the second is with ammonia refrigeration units. In both cases, the Commission is not requiring the Applicant to meet the most protective standards. In an environmental justice community already burdened by the impacts from one recently approved power plant, the Commission should require the most protective feasible mitigation measures available regards of whether or not the Applicant requested them.

Ammonia Slip

In the PMPD's discussion on ammonia slip limits for mitigation purposes, the Commission reveals that a standard of 5 ppm is achievable. PMPD at p. 26. However, instead of requiring that limit, the Commission requires a much looser standard of 10 ppm as averaged over one hour. The Commission also provides that if plant is consistently over 5 ppm as averaged over a 24 hour period, then the owner must take action. PMPD at p. 26. The Commission provides a methodology for monitoring and reporting the ammonia slip to the Air District in Condition AQ-C10. PMPD p. 33. However, this condition does not define what consistently means. It allows the Applicant to violate the 5 ppm limit a number of times before it is deemed in non-compliance and must take action to correct the problem. If the 5 ppm is achievable, it should be required without exception.

Ammonia Refrigeration

The Commission recognizes that use of ammonia refrigeration units can, in the event of an accident, result in serious offsite consequences. As a result, the Commission is asking the Applicant to "seriously consider" using a less toxic alternative, an aqueous solution of lithium bromide. PMPD at p. 106. The Commission should require use of this less toxic alternative or require the Applicant to demonstrate that its use is infeasible. Because an alternative exist with less impact exists, it should be required.

Cumulative Impacts

The scope of the cumulative air impact analysis extended to proposed and permitted, but not yet built projects within 6 miles of BEP II. As stated above, however, the CEC licensing process is supposed to be the functional equivalent of CEQA. Under CEQA, the scope of analysis includes past, present and future projects with related impacts and does not contain a geographical limit. 14 CCR § 15130 requires that all projects with impacts reasonably related to the impacts caused by the project by analyzed regardless of proximity to the proposed project. California case law has recognized that this scope of analysis could include the entire air basin in the instance of air polluting facilities. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721-722. Here, not only did the PMPD narrowly and improperly confine itself to future project within 6 miles, it also overlooked the BEP I project right next to this proposed BEP II for analysis of cumulative air quality impacts. The Commission cannot legally ignore the cumulative impacts of

these two neighboring power plants and conclude that there is not significant cumulative impact.

Water

Because the Applicant is requesting to use wet cooling, BEP II will use 3,300 acre feet of water annually (6,600 if BEP is factored in as well). To mitigate this potentially significant impact, the Applicant has voluntarily agreed to implement a Water Conservation Offset Program (WCOP). Under the WCOP, the Applicant will work with farmers in the area to retire or fallow 786 acres per year of irrigated agriculture to offset the water usage. The Commission estimates that this will result in the loss of 6.33 full time jobs per year. The Commission defers creating a mitigation measure requiring the Applicant to create a plan for addressing farming sector impacts and a fund with a one time contribution of $198,000. However, the project will extend for thirty years, displacing at least 6 jobs for each of those years. This speculative mitigation measure is not adequate to fulfill the retraining objectives outlined in the PMPD. Furthermore, the PMPD expressed skepticism itself that the WCOP could actually mitigate the impacts. PMPD p. 162-164. In addition, verification that this condition has not yet been formulated. The mere creation of a plan and setting aside of money for the fund should not be verification that this impact has been addressed. Successful implementation of that plan is the key to mitigating the impacts. It should be noted that this undefined mitigation measure would not be necessary if the Commission followed the Staff's recommendation and required dry cooling.

Conclusion

The Commission's PMPD seems to require the Applicant to do as little as possible. Whatever the Applicant does not want to do it does not have to do regardless of public comments detailing the adverse impacts from the already existing BEP I. The Commission should either deny BEP II's license or require BEP to implement mitigation measures that will further reduce impacts to this already burdened environmental justice community. The current effort does not comply with the duty to be the functional equivalent of CEQA. In addition, because of the disparate impact this facility will have on people of color, there is a significant question as to whether the approval of this project would violate Title VI of the Civil Rights Act of 1964.

Sincerely,

Caroline Farrell
Attorney at Law